

### REMARKS

By this amendment, claim 1 has been amended to incorporate the subject matter of originally filed claim 2 and claim 2 has been canceled without prejudice. Applicant has also amended claim 16 to more particularly point out and distinctly claim applicant's invention. The amendment to claim 16 is supported at page 4, lines 7-8 of the specification as originally filed. Thus, no new matter has been added. Applicant appreciates the indication at page 3 of the Office action that claims 17-21 are allowable and that claims 11-14 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 1 and 3-21 are currently pending in the present application. Reexamination and reconsideration of the application as amended are respectfully requested.

### Statement of Common Ownership

Lim et al. (U.S. Patent No. 6,344,045) and Simhambhatla et al. (U.S. Patent No. 6,428,506) are cited against the present application in the Office action dated May 7, 2003. Applicant respectfully submits that the Lim et al. and Simhambhatla et al. references and the present application were, at the time the presently claimed invention was made, each either owned by or subject to an obligation of assignment to Advanced Cardiovascular Systems, Inc.

### 35 U.S.C. § 102(e) Rejections

The Office rejected claims 1, 3 and 15 under 35 U.S.C. § 102(e) as being anticipated by Lim et al. Claim 1 has been amended to recite the subject matter of claim 2 which was not rejected on this ground. At page 3 of the Office action, the examiner acknowledges that Lim et al. does not teach an expanded UHMWPE that is microporous and has a node and fibril microstructure comprising nodes interconnected by fibrils, as was recited in original claim 2. As this element is now recited in amended claim 1, applicant respectfully submits that claim 1, as well as claims 3 and 15 dependent therefrom, are not anticipated by Lim et al. and requests that the 102(e) rejection be withdrawn.

### 35 U.S.C. § 103(a) Rejections

The Office also rejected claims 4-7 and 16 under 35 U.S.C. § 103(a) as being unpatentable over Lim et al, claim 2 under § 103(a) as being unpatentable over Lim et al. in view of Simhabhatla et al., and claims 8-10 under § 103(a) as being unpatentable over Lim et al. in view of Saab (U.S. Patent No. 5,499,973). In view of the statement of common ownership presented herein, applicant respectfully asserts that Lim et al. and Simhabhatla et al. are not valid 35 U.S.C. § 103 references and traverses the rejections. MPEP 706.02 (I) (2).

The present application was filed after the November 22, 1999 effective date of change to 35 U.S.C. § 103(c) which disqualifies § 102(e) prior art from consideration under § 103 if the subject matter of the reference and the claimed invention were

commonly owned at the time the claimed invention was made. To establish common ownership, Applicant has made herein a statement that the Lim et al. and Simhambhatla et al. patents and the present application were, at the time the invention was made, each either owned by or subject to an obligation of assignment to the same company. Accordingly, Applicant submits that Lim et al. and Simhambhatla et al. are disqualified as prior art under § 103 against the present application.

Without the teachings of the Lim et al. and Simhabhatla et al. references, the only remaining § 103 rejection is that of claims 8-10 in view of Saab. The examiner has relied on Saab only for disclosure of a reinforcing structure (see page 4 of the Office action), and Saab does not teach or suggest expanded UHMWPE that is microporous and that has a node and fibril microstructure comprising nodes interconnected by fibrils, as is recited in amended claim 1 and included in each of claims 8-10 due to their dependency on claim 1. Therefore, applicant respectfully requests that the § 103(a) rejections be withdrawn.

Applicant also respectfully submits that claims 11-14 which were objected to as being dependent from a rejected base claim are now allowable in view of the patentability of claims 9 and 10 from which they depend.

CONCLUSION

Based on the foregoing, applicant respectfully submits that all claims are now in condition for allowance. Reexamination and reconsideration of the application as amended are respectfully requested and allowance at an early date is solicited.

Respectfully submitted,

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